



DEPARTMENT OF JUSTICE

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May 26, 2016

VIA E-MAIL ONLY: [cbrosseau@oregonian.com](mailto:cbrosseau@oregonian.com)

Carli Brosseau  
The Oregonian  
1500 SW 1<sup>st</sup> Avenue, Suite 400  
Portland, OR 97201

Re: Petition for Public Records Disclosure Order:  
*Oregon Department of Corrections Records*  
DOJ File No.: 291011-GA0077-16

Dear Ms. Brosseau:

This letter is the Attorney General's order responding to your May 12, 2016, petition for a fee waiver under the Oregon Public Records Law, ORS 192.410 to 192.505. Thank you for agreeing to extend the deadline to issue an order to May 26. Your petition asks the Attorney General to order the Department of Public Safety Standards (DPSST) to waive the estimated fee to produce staff reports, notices of intent, and exhibit lists from 210 professional standards cases.

We respectfully deny your petition because DPSST's decision to grant you a 50% fee waiver, as opposed to a 100% waiver, was reasonable under the totality of the circumstances, and the true purpose of the nonwaived fee was not to constructively deny your records request.

The Public Records Law confers a right to inspect any public record of a public body in Oregon, subject to certain exemptions and limitations. ORS 192.420(1). A public body may establish fees reasonably calculated to recover its actual cost in making public records available for inspection, but may waive or reduce its fee if doing so "is in the public interest because making the record available primarily benefits the general public." ORS 192.440(4)-(5). Even if waiving or reducing the fee is in the public interest, a public body has discretion whether or not to grant such a waiver or reduction. *In Defense of Animals v. OHSU*, 199 Or App 160, 189, 112 P3d 336 (2005). But, examining the totality of the circumstances, "the public body's decision whether to grant or deny a fee waiver or reduction must be reasonable." *Id.* at 190.

This decision should usually be based on the following factors: 1) the character of the public interest in the particular disclosure; 2) the extent to which the fee impedes the public interest; and 3) the extent to which waiver or reduction would burden the public body. *Attorney General's Public Records & Meetings Manual* 23 (2014).

Any person denied a fee waiver or reduction by a state agency may petition the Attorney General to review that denial. ORS 192.440(6). In addition, while the Attorney General is generally not authorized to review the reasonableness of an agency's fee estimate, the Attorney General may do so where the amount of the fee in comparison to the nature of the request suggests that the true purpose of the fee is to constructively deny the request, rather than to recoup the agency's actual costs. *Attorney General's Manual* 18–19.

Your petition states that DPSST provided an estimated cost of \$3,660.30 to gather, review, and produce the staff reports, notices of intent, and exhibit lists from 210 files. This figure was based on .5 hours per file at a \$34.86 hourly rate. DPSST agreed to waive 50% of the fee, resulting in an actual quote of \$1,830.15, but would not agree to waive the entire fee. Your petition further states that you attempted to narrow the scope of your request so as to reduce the staff time needed to respond, and alleges that DPSST retains only paper copies of these files, which increases the cost for DPSST to respond to records requests.

We spoke with Linsay Hale, DPSST's Professional Standards Division Director. Ms. Hale told us that the .5 hours review time per file is a good-faith estimate based on the need to review paper files for several different types of documents, scan those responsive documents, and review them for exemptions to the public records law. She added that the quoted cost was based on reviewing paper files, as opposed to electronic files, because the paper files contain the most accurate representation of which documents were presented to the appropriate committee or the Board on Public Safety Standards & Training for review.

She further explained that these professional standards cases proceed along one of three pathways: mandatory, administrative, or discretionary. Only cases that proceed along the discretionary pathway require that a staff report and exhibit list be finalized and presented to a committee or to the board. That is, were DPSST to review only its electronic files for responsive documents, it might produce staff reports and/or exhibit lists that were created as drafts and were never considered by the appropriate committee or by the board.

That being said, Ms. Hale told us that DPSST is willing and able to conduct an electronic review for documents responsive to your request: this will take approximately .25 hours per file, which results in an estimated cost of \$1,830.15; DPSST will grant a fee waiver of 50% to reduce this cost to \$915.08.

As a threshold matter, we agree with you that producing these records will primarily benefit the public interest: you work for a major news organization that has the ability to analyze the requested records and then disseminate the results of that analysis to the public. However, DPSST may still deny a request for a 100% fee waiver if such denial is reasonable under the totality of the circumstances. See *In Defense of Animals*, 199 Or App at 190. DPSST's fee will

likely not impede the public interest: *The Oregonian* is a major news outlet with resources to pay the fees DPSST incurs in responding to records requests. In addition, DPSST would be significantly burdened if it were required to gather, review, and produce documents from 200+ files for no cost. Finally, the character of the public interest is fairly general; that is, the articulated interest here is how DPSST's enforcement of police standards works, as opposed to any public interest in specific cases. These factors cause us to conclude that DPSST's decision to grant a 50%, as opposed to a 100%, fee waiver was reasonable under the circumstances.

In addition, we conclude that the true purpose of DPSST's fee was not to constructively deny you records request: DPSST provided a good-faith cost estimate based on the review of paper files because those paper files provide a more accurate representation of the documents you're requesting, and DPSST is able to provide you with a revised estimate based on a review of electronic documents instead.

For these reasons, we respectfully deny your petition.

Sincerely,



Frederick M. Boss  
Deputy Attorney General